IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1997 of 1983

with

CROSS OBJECTION No 24 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GSRTC

Versus

BHAGWANDAS C SOLANKI

Appearance:

1. First Appeal No. 1997 of 1983
   MS.MAYA DESAI for MR MD PANDYA for Petr.No. 1
   MR KC SHAH for Respondent No. 1
   NOTICE SERVED for Respondent No. 2
2. CROSS OBJECTION No. 24 of 2001
   MS.MAYA DESAI for MR MD PANDYA for Petr.No. 1
   MR KC SHAH for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 29/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The appellant GSRTC has preferred this appeal under section 110-A of the Motor Vehicles Act challenging the award dated 9.12.1992 passed by the Motor Accident Claims Tribunal (Auxi) Baroda in MACP No.729 of 1981 whereby the Tribunal ordered the appellant and the present respondent no.2 to pay jointly and severally to the claimant -respondent no.1 Rs. 78,455/- with proportionate costs and interest at the rate of 6% per annum from the date of the application till realisation. It may be stated that the claimant claimed Rs. 4,14,355.80. However, by pursis Ex. 15, he reduced the claim to Rs. 1,14,355.80. The claimant has also filed Cross Objections claiming Rs. 23000/- not awarded by the Tribunal. The accident in question took place on 27.1.1980 near Manjalpur turning on National Highway No.8 in the City of Baroda when the respondent no.1 claimant was knocked down by ST bus no. GRS 7907 driven by respondent no.2 in a rash and negligent manner.

2. As per the say of the claimant in the claim petition, on 27.1.1988 at about 6.40 p.m., the claimant who was then residing at Manjalpur, Baroda, was returning home on a bicycle and when he was on N.H.W.No.8 at a slow speed and on correct side of the road and when he attempted to take turn on his right side in order to be on the road leading to village Manjalpur, respondent no.2 came driving the bus at an excessive and uncontrollable speed from behind and by rushing on the wrong side struck him down by its front part in such a way that he himself and his bicycle fell in between the front wheels and he sustained injuries on his hip and abdomen. The injury was very serious and it caused fracture of his pelvis bone and rupture of the urinary bladder as a result of which he was required to take treatment initially in the SSG Hospital, Baroda from 22.7.1980 to 8.10.1980 and then in the Civil Hospital at Ahmedabad from 14.10.1980 to 20.11.1980 and yet he was not completed cured. As per the say of the claimant, during the course of treatment, a catheter was required to be placed in order to drain out urine from his bladder and he developed fisula at the root of his penis and urine started dribbling out of it. For the cure of fisula, he was required to remain in

hospital and even after his discharge from there, he was not completely cured and the injury of rupture of urinary bladder made him completely impotent. He has claimed Rs. 1,10,000/- for the pain, shock and suffering, permanent disability and loss of matrimonial prospects due to the injury causing impotency and has also claimed Rs. 4,355/- as special damages as per the details given in the claim petition.

3. The respondents challenged the claim by their written statement Ex. 11 and 14 contending inter alia that the accident did not result from the rash and negligent driving of the respondent no.2. It is the case of the defence that on the relevant day, the claimant was driving his bicycle ahead of the ST bus and when he was about to cross the road, one rickshaw came from the opposite direction and dashed against his bicycle and while trying to save himself, the claimant fell in front of the bus for which the respondent no.2 was not at all responsible. It is the say of the respondent no.2 that he drove the bus at a moderate speed and carefully and the accident resulted on account of carelessness on the part of the claimant himself. Both the original opponents have denied the injuries sustained by the claimant, taking treatment in the hospital and the injury which rendered the claimant impotent and the claim for damages under various heads. Finally, without prejudice to their main contention, it was submitted that the claim of the claimant is highly exaggerated.

4. The learned Tribunal, on the basis of the pleadings, framed issues at Ex. 15. The learned Tribunal, after appreciating the evidence, oral as well as documentary, allowed the claim of the claimant to the extent of Rs. 78,455/-. Hence the present appeal.

5. Learned advocate Ms. Desai for the appellant, after taking us through the entire evidence on record, submitted that the learned judge has committed an error by holding that the claimant sustained injury because of rash and negligent driving by the respondent no.2. Alternatively, she submitted that this being the case wherein the claimant himself is also responsible for running bicycle carelessly, this Court may also make him liable to the extent of 50%. She further submitted that in the instant case, there is no positive finding regarding the total impotence the claimant has suffered. In the submission of learned advocate, in absence of positive medical evidence that the claimant had become impotent, the Tribunal proceeded on the basis that he had become impotent and erroneously awarded Rs. 75000/- by

way of pain, shock and suffering.

6. Learned advocate appearing for the respondent no.1 claimant Mr.K.C.Shah, while supporting the award of the Tribunal, submitted that considering the facts and circumstances of the case, the Tribunal ought to have granted full claim of the claimant. He, therefore, submitted that the Cross Objections claiming the balance amount be allowed.

7. The claimant has examined himself at Ex. 25. As per his deposition, on 21.7.1980 at about 6.30 p.m. when he was driving his bicycle with his sister's young daughter sitting on the front part, the incident happened. As per his say, he was going from north to south on the NHW No.8 at a moderate speed and when he reached at the point where the road leading to Manjalpur links with NHW No.8, he took a turn on his right hand side after showing signal by his right hand as he wanted to go to Manjalpur. At that time, respondent no.2 came driving the bus at an excessive and uncontrollable speed and struck him down by its front part as a result of which he was thrown off and ultimately fell in between the front two wheels of the bus. His bicycle was materially damaged and he also sustained injuries. He has denied the suggestion in the cross examination that one rickshaw came from front direction when he took the turn and dashed against his bicycle. He has also denied the suggestion that when the rickshaw dashed against his bicycle, the bus stopped and he got sandwiched between the bus and the rickshaw. From the panchanama of the place of accident Ex.27, it is clear that the incident took place on NHW No.8 which has a width of about 48 feet. There were kutcha shoulders each having width of 13 feet on its both sides. It is clear that the road is having more width at the place of accident as the other road running east to west crosses it. Considering the fact that the road was wide enough for the safe passage of the bus, the bus could have passed without causing any accident. The fact that the claimant was going ahead of the bus on a bicycle, the bus driver could have noticed him and could have taken proper care to see to it that the bus did not strike the bicycle. From the panchanama Ex. 27, it is clear that the bus rushed on the wrong side of the road. No explanation is coming forward as to how and in what circumstances, the bus had rushed on the wrong side of the road and, therefore, it can safely be concluded that the bus was driven at an excessive and uncontrollable speed at the time of the incident. We, therefore, hold that the respondent no.2 had failed to take care which an ordinary prudent driver could have

taken in a given situation. We, therefore, hold that the carelessness on the part of the respondent no.2 resulted into accident and injuries to the claimant. The learned Tribunal, in para 7 of his judgment, has rightly appreciated the evidence of respondent no.2 recorded at Ex. 48. His evidence is inconsistent with the case in the written statement. According to his evidence, the driver was driving the bus in moderate speed and while he was near Manjalpur naka, he wanted to stop it for taking passengers. At that time, one rickshaw came from the opposite direction and one bicycle came from behind and dashed against the rickshaw and the rear part of his bus slightly touched the cyclist. The learned Tribunal has also observed that this is a new story pleaded.The case pleaded in para 9 of the written statement is that the claimant was driving his bicycle ahead of the bus. It is not the case in the written statement that the bicycle came from behind and that rear portion of the bus slightly touched the bicycle. On the contrary, in the cross examination, the respondent no.2 had admitted that the bicycle and the bicycle rider came in the front two wheels of the bus and the bicycle rider had received injuries and, therefore, the bus conductor had taken him into hospital. In our opinion, the evidence of respondent no.2 is sufficient for us to hold that the claimant sustained injuries because of the rash and negligent driving of the bus by the appellant. We, therefore, see no merits in the first submission advanced by the learned advocate for the appellant.

8. The claimant, from his evidence Ex. 25, has established the injury sustained and the treatment taken by him. From his evidence, it is clear that he sustained injuries on abdomen and on examination, it was found to be in the form of fracture of pelvis bone and rupture of urinary bladder. He was required to be admitted in the hospital and was operated upon. The catheter was required to be placed in order to drain out urine from his bladder as the bladder was ruptured and it was required to be sutured. According to him, he developed fisula and urine started dribbling out of penis and while passing urine, he experienced burning sensation. He has also stated that he remained in SSG Hospital for 79 days and when he was discharged, fisula was not cured and urine was still dribbling out of penis. He had also taken treatment in Kidney Hospital at Nadiad. However, he could not afford the cost of treatment at Nadiad. He, therefore, went to Civil Hospital, Ahmedabad where he took treatment as an indoor patient for 36 days. He was operated for repair of fisula and catheter was again fixed for about one month. He has further deposed that

even after such prolonged treatment, fisula is not cured and that urine is dribbling out of it and his gait has become limping. He has categorically stated that because of the injury to bladder, he has become impotent and his marriage prospects have been marred for ever. He has been corroborated by Dr. K.M.Shah, Ex. 38, doctor at SSG Hospital, Baroda, Dr.AC Shah,Ex.38, Dr.Kakdia Ex. 45 of Civil Hospital, Ahmedabad, Dr. Minoo Patel Ex. 40 and Dr. Prakash Pathak Ex. 41. From their evidence, it is clear that the claimant sustained injuries which were very grave in nature and they were likely to bring about permanent impotency to the claimant. Dr. K.M.Shah, Ex. 38 has stated in his evidence that according to American Statistical Report, 30% to 40% of such patients have become impotent. Similar is the opinion given by Dr. A.C.Shah, Ex.38. Dr. Kakdia Ex. 45, in his evidence, has stated that Dr. Mandavia operated the claimant in his presence. According to him, Denis Brown repair (second stage) was done upon him in order to see that the fisula got patched by healing. When the claimant was discharged, he was not completely cured and few drops of urine were yet dribbling at the time of urination.

9. From the medica evidence on record, it is clearly established that the respondent no.1 had suffered injury in the form of fracture of pelvis bone and rupture of urinary bladder for which he was required to take prolonged treatment in SSG Hospital, Baroda and in Civil Hospital, Ahmedabad as an indoor patient and he developed fisula at penis which is not cured. It is also clear that 40% patients receiving such injuries are reported to have developed impotency. There is no reason to discard the medical evidence. It is the positive case of the claimant that he has become impotent and that say of his is duly corroborated by the evidence of Dr. Minoo Patel who deposed at Ex. 40 that on 2.12.1980, the claimant complained before him of his having rendered impotent and, therefore, he referred him to Dr. Prakash Pathak who was then doing postgraduate course. On reference to Dr. Prakash Pathak, it was found that the claimant could not give sample of semen and reported that the erection capacity of his penis was lost. Dr. Pathak has categorically stated that for the purpose of collecting sample of semen, he had directed the respondent no.1 to retire in the toilet and after some time, he returned and reported that it was not possible for him to give sample of semen because there was no erection of penis. This fact is noted down by Dr. Pathak at Ex. 31. Thus, Dr. Pathak, in our opinion, has completely proved the fact of claimant having become impotent. There cannot be any better evidence when a person asserting that he has

become impotent is duly corroborated by the medical evidence. We, therefore, see no merits in the submission advanced on behalf of the appellant that there is no positive medical evidence to show that the respondent no.1 claimant has become impotent.

10. Once it is established that the claimant has become impotent, the law laid down by this Court in the case of A.S.Rajara Vs.Joitaram Rawabhai Patel, 1982(2) GLR 29 applies in the instant case for fixing the compensation for pain, shock and suffering. This Court,in the said decision, awarded Rs. 75000/- as damages under the head pain, shock and suffering and losing enjoyment of sexual life. The said decision was followed in a later decision reported in the case of National Insurance Co. Vs. Minor Ramanbhai F., 1982(2) GLH 742. It is laid down that the loss of enjoyment of sexual life as a result of injury caused to the claimant is an injury of a class by itself and no amount of money can offer any real compensation. It is a peculiar type of injury which does not fall within any of the brackets of the injury with which the High Court was concerned in past for which an amount of Rs. 75000/- should be awarded under the head of pain, shock and suffering and loss of amenities and enjoyment of life.

11. The Tribunal, in the instant case, rightly applied the ratio laid down in the aforesaid decisions by this Court and has rightly awarded Rs. 75000/- to the respondent no.1 claimant. No exception can be made for taking a different view in the matter as in our opinion, the facts of the present case are squarely covered by the ratio laid down by the aforesaid two decisions.

12. The learned Tribunal, after appreciating the evidence on record,has rightly awarded Rs. 4,355.80 as special damages and adding the same to Rs. 75,000/-, ultimately allowed Rs. 78,455/-. Since no serious arguments have been advanced by the learned advocate for the appellant for the amount to be paid by way of special damages, we accept the said amount of award by the Tribunal. Learned advocate Mr. Shah appearing for the claimant is unable to point out anything to substantiate the claim made in the Cross Objections. As the Tribunal has also recorded a finding that the claimant has not produced any satisfactory evidence to claim special damages over and above awarded by the Tribunal, we accept the said finding of the Tribunal by rejecting the Cross Objections preferred by the claimant.

13. In the result, the appeal as well as Cross

Objections fail and are dismissed. Considering the facts and circumstances of the case, parties shall bear their own costs.

(Kshitij R.Vyas,J.)

(H.K.Rathod,J.)

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